

**U.S. Department of Justice****Environment and Natural Resources Division**

JMG:JDF
90-11-2-07106

Environmental Enforcement Section
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October 11, 2000

BY FACSIMILE

John D. McCarthy, Esq.
Holme Roberts & Owen LLP
1700 Lincoln Street
Suite 4100
Denver, Colorado 80203-4541

Re: United States v. W.R. Grace & Co., et al.;
Civil Action No. 00-167-M-DWM

Dear Jay:

This is a follow up to my September 19, 2000 letter to Ken Lund regarding the conditions under which Grace might grant access to the KDC properties. In particular, I would like to respond to the issues you raised in our recent telephone conference, which are more specific than the issues Grace has raised on previous occasions.

First, you stated that you do not know precisely where at the former Grace vermiculite mine EPA plans to place asbestos-contaminated materials that it removes from the properties that once formed Grace's screening plant. I understand that EPA has discussed both specific disposal locations with KDC and Grace officials on numerous occasions. Moreover, this issue is discussed in Paragraph 15 of Paul Peronard's declaration. However, I will provide this information to you so the record is clear. If granted access to the mine, EPA plans to place asbestos-contaminated building debris at the toe of the waste rock overburden dump, located in Area 12 on the mining maps. Grace is currently placing asbestos-contaminated debris from the export plant on this location. EPA plans to place asbestos-contaminated soils near the top of the mine, located in Area 19 on the mining maps. Grace is currently placing asbestos-contaminated soils removed from the export plant in a nearby location.

Second, you stated that Grace is concerned that drums of pesticides, pesticide-contaminated soils, and contaminated underground storage tanks may be present on the Parker's property, which is part of the screening plant removal action. You wanted to know what EPA's plans were regarding disposal of these types of materials, particularly whether they would be disposed of at the mine. EPA did find that the Parker's maintained several small containers of pesticides on their property -- not unusual for a tree nursery. EPA has already disposed of this material at an off-site location. Regarding the potential for pesticide contamination in the soil,

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EPA evaluated the Parker's pesticide use practices and determined that there was no risk that contamination exists from this usage. In light of the concerns you expressed to me, and that Grace officials have recently expressed in various public forums in Libby, EPA is sampling the soil removed from the Parker's property to confirm this assessment. I understand that Grace has been provided with splits of these samples. Finally, EPA has uncovered an underground storage tank on the Parker's property that was a remnant of Grace's screening plant operations. EPA has already disposed of this off-Site. As a result, your stated concerns regarding non-asbestos sources of contamination are not well founded.

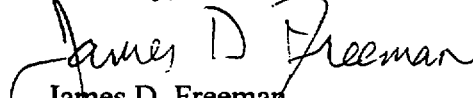
Third, in my September 19 letter, I explained why EPA could not agree to indemnify Grace for any accidents that may occur while EPA is conducting work on the KDC properties. It is important to note, however, that the physical work at the KDC properties will be done by contractors hired by EPA. EPA requires these contractors to have appropriate insurance policies to cover accidents that may occur while the work is taking place. I trust this will assure you that there is a mechanism in place to address this issue.

Finally, you stated that Grace would require a "tipping fee" to permit the disposal of asbestos-contaminated soil at the mine. I believe this demand is specious. EPA's removal action is addressing contamination of soils that occurred during Grace's ownership. For whatever reason, Grace did not address this contamination prior to selling the properties. It would not be appropriate for EPA to pay Grace, or a Grace subsidiary, a fee to dispose of asbestos-contaminated soil at the mine that originally produced the asbestos.

My September 19 letter, supplemented by this letter, has addressed Grace's stated reasons for refusing to provide access. None of Grace's proffered reasons justify its refusal to provide access under Section 104(e) of CERCLA. Accordingly, I urge Grace to reconsider its position based on the information I have provided. As you know, the impending onset of winter will make it increasingly difficult for EPA to undertake necessary response actions this year. As a result, your immediate attention to this matter is requested.

Please contact me if you have any questions about this matter.

Sincerely,


James D. Freeman
Trial Attorney

cc: Matthew Cohn, EPA

*** TX REPORT ***

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FROM: Department of Justice
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Environmental Enforcement Section
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SENT BY: James D. Freeman

TO: John D. McCarthy, Esq.

FAX: (303) 866-0200



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